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No. [redacted]

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

IRVING J. ENGELMAN, ET AL., *Appellants*,

v.

CAROLYN AMOS, ET AL., *Appellees*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

APPELLANTS' BRIEF IN OPPOSITION TO MOTION TO AFFIRM

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January 1971

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 931

IRVING J. ENGELMAN, ET AL., *Appellants,*

v.

CAROLYN AMOS, ET AL., *Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

APPELLANTS' BRIEF IN OPPOSITION TO MOTION TO AFFIRM

Most of the points argued in appellees' Motion to Affirm have been dealt with in the Jurisdictional Statement and rebuttal is unnecessary.[1] However, one com-

[1] One statutory provision cited by appellees (Social Security Act § 402(a)(10), 42 U.S.C. § 602(a)(10) (Supp. V, 1970)) was not referred to in the Jurisdictional Statement (nor cited by the court below). This provision was designed to prevent states from delaying the commencement of AFDC benefits by the use of waiting lists. *See* Dandridge v. Williams, 397 U.S. 471, 481 n.2 (1970). New Jersey, which does not employ waiting lists, is in compliance with this statute.

ment is required to avoid a misleading impression that may be created by appellees' argument on the direct vendor payments point.

Appellees concede that the fact that New Jersey makes direct vendor payments entirely from state funds is a "crucial point" (Motion to Affirm, p. 16). Since this point was not made below, they surmise that these payments historically may not have been funded solely by the state and that this is a new development, perhaps the result of this litigation.

The point that these payments are entirely state-funded was not made below because the validity of direct vendor payments under federal law was not in issue.[2] The practice of making direct vendor payments entirely from state funds is of long standing and has not been altered by reason of this litigation.[3] Appellees make no effort to show that direct vendor payments financed solely from state funds contravene federal

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[2] See Jurisdictional Statement, p. 25.

[3] Vendor payments have been entirely state-funded since the inception of New Jersey's federally connected AFDC program in the 1930's. And *see* New Jersey Manual of Administration, pt. II, § 2501, adopted in 1959, which states explicitly that (with one exception not applicable to this case) "Federal participation is limited to . . . unrestricted money payments to an eligible recipient . . . ."

law, a position that would be in conflict with the applicable federal regulation.[4]

Respectfully submitted,

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[4] HEW Handbook of Public Assistance Administration, pt. IV, § 5120, quoted in the Jurisdictional Statement, p. 26 n.44.